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Paper No. 6  
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DEC 17 2001

OFFICE OF PETITIONS

In re Application of  
Scheer  
Application No. 09/867,174  
Filed: May 29, 2001  
Attorney Docket No. 31083.05US2

DECISION GRANTING  
PETITION

This is a decision on the "response," filed on August 21, 2001, which is being treated as a petition, requesting that the above-identified application be accorded a filing date of May 29, 2001, rather than the presently accorded filing date of May 16, 2001.

The petition is **GRANTED**.

The present petition requests a later filing date of May 29, 2001, on the basis that the application was deposited in the U.S. Postal Service (USPS) "Express Mail Post Office to Addressee" service ("Express Mail") on that day rather than on May 16, 2001 as shown by the "date-in" entry on the mailing label. This petition is being treated as a petition under 37 CFR 1.10(d).<sup>1</sup>

37 CFR 1.10(d) requires, *inter alia*,<sup>2</sup> a showing, establishing that the requested filing date was the date of deposit of the application in the "Express Mail" service prior to the last scheduled pickup for that day, and, corroborated by evidence from the USPS.<sup>3</sup> The transmittal form for the originally filed application indicates that the application papers were being deposited with the USPS "Express Mail Post Office to Addressee" service on May 29, 2001. This date of deposit is

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<sup>1</sup> 37 CFR 1.10(d) (Aug. 2001) (61 FR 56439, Nov. 1, 1996, effective Dec. 2, 1996; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997) (Any person filing correspondence that was received by the Office and delivered by the USPS "Express Mail Post Office to Addressee" service, who can show that the "date-in" on the "Express Mail" mailing label . . . was incorrectly entered by the USPS, may petition to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS . . .).

<sup>2</sup> 37 CFR 1.10(d)(1) requires that the petition be filed promptly after the person becomes aware of the incorrect "date-in" entry by the USPS. This requirement is considered by the Office to have been met. The requirement under 37 CFR 1.10(d)(2) that the number of the "Express Mail" mailing label be placed on the application prior to the mailing is also met, in that, this number, EL 684657930 US, is on the transmittal form of the originally filed application.

<sup>3</sup> 37 CFR 1.10(d)(3). See also MPEP section 513 (Aug. 2001) (Petition to correct incorrectly entered date-in).

further corroborated by the information on the official USPS web site.<sup>4</sup> The petition is thus granted. No fee is required for petitions under 37 CFR 1.10.

The Office also acknowledges receipt with the present petition of a Declaration in response to the July 26, 2001 Notice to File Missing Parts of Nonprovisional Application, and on August 30, 2001 of an Information Disclosure Statement (IDS). Deposit Account No. 01-1156 has been charged \$130 as authorized in the present petition for late filing of the declaration.

The application is being returned to the Initial Patent Examination Division for further processing with a filing date of May 29, 2001, and for issuance of a corrected filing receipt.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.



Beverly M. Flanagan  
Supervisory Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>4</sup> According to [www.usps.gov](http://www.usps.gov), Track & Confirm, this application package was received at the USPS on 5/29/01.

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